

REMARKS

Claims 24-51 are pending in this application. Claims 24-43 have been withdrawn from consideration. By this amendment, claims 44-51 are amended. Of the examined claims, claims 44 and 48 are independent. No new matter is involved.

Reconsideration of this Application, as amended, is respectfully requested.

Rejection under 35 USC § 112, Second Paragraph

Claims 44-51 stand rejected under 35 USC § 112, second paragraph for being indefinite. This rejection is respectfully traversed.

The test for compliance with the second paragraph of 35 U.S.C. § 112, as stated in *Miles Lab., Inc. v. Shandon Inc.*, 997 F.2d 870, 875, 27 USPQ2d 1123, 1126 (Fed. Cir. 1993), *cert. denied*, 510 U.S. 1100 (1994), is whether one skilled in the art would understand the bounds of the claims when read in light of the specification. If the claims, read in light of the specification, reasonably apprise those skilled in the art of the scope of the invention, Section 112 demands no more. *See also In re Merat*, 519 F.2d 1390, 1396, 186 USPQ 471, 476 (CCPA 1975), which stated that the question under Section 112, second paragraph is whether the claim language, when read by a person of ordinary skill in the art in light of the specification, describes the subject matter with sufficient precision that the bounds of the claimed subject matter are distinct. *See also In re Warmerdam*, 33 F3d 1354, 1361, 31 USPQ2d 1754, 1759 (Fed. Cir. 1994). Moreover, this claim recites "substantially." Use of that term in a claim does not render the claim indefinite if the specification provides a standard whereby one of ordinary skill in the art would understand what is claimed when the claim is read in light of the specification. *See Seattle*

Box Co., Inc. v. Industrial Coating and packing, Inc., 731 F.2d 818, 826, 221 USPQ 568, 573-4 (Fed. Cir. 1984).

The second paragraph of 35 U.S.C. § 112 requires claims to be set out and circumscribe a particular area with a reasonable degree of precision and particularity. *See In re Johnson*, 558 F.2d 1008, 1015, 194 USPQ 187, 193 (CCPA 1977).

Applicants respectfully submit that the claims fully comply with 35 U.S.C. § 112, second paragraph, as they stand and because one of ordinary skill in the art can readily determine the metes and bounds of the invention.

Applicants respectfully submit that one of ordinary skill in the art realizes, as pointed out in the background of the invention portion of this application, that some light emitting diodes comprise both a phosphor and a short wavelength light emitting diode, wherein the short wavelength light emitted by the diode is used to illuminate the phosphor to achieve wavelength converted light.

In fact, U.S. Patent 7,732,827, contains a number of claims which recite a light emitting diode which includes both a light emitting semiconductor that emits light of a first wavelength and a light conversion layer having a light conversion material, which is also evidence that one of ordinary skill in the art understands that the metes and bounds of Applicants' claimed invention are clear and definite.

The rejection also indicates that "Applicant defines the diode, a functionally limited material, as including a secondary material not having functionality as a diode in any regard."

Applicants respectfully submit that this interpretation of the claimed invention is unreasonable and is like saying that a claim to a “motor vehicle” is indefinite if fog lamps are included in the claim, because the fog lamps do not function as a motor vehicle.

Additionally, Applicants respectfully submit that the conclusion that the claims are so indefinite as to make meaningful application of the prior art impossible is also unreasonable because there is no stated lack of understanding of the disclosed invention, and the Office itself has sanctioned the use of “light emitting diode” in a claim to a device which includes not only a semiconductor light emitter, but also a luminescent layer to wavelength convert the light emitted by the semiconductor light emitted.

Nevertheless, in an attempt to advance prosecution of this application, claims 44-51 are amended to change “light emitting diode” in the preambles of claims 44-51 to recite - -light emitting apparatus - -.

Accordingly, reconsideration and rejection of this rejection of claims 44-51 are respectfully requested.

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone Robert J. Webster, Registration No. 46,472, at (703) 205-8000, in the Washington, D.C. area.

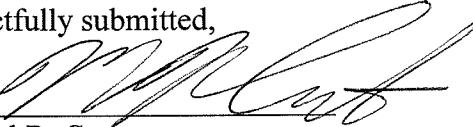
Prompt and favorable consideration of this Amendment is respectfully requested.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

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Respectfully submitted,

By


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